

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

HAROLD JOE BLACK

CIVIL ACTION NO. 10-0094-P

VERSUS

JUDGE S. MAURICE HICKS, JR.

WARDEN, DAVID WADE CORRECTIONAL  
CENTER

MAGISTRATE JUDGE HORNSBY

**MEMORANDUM ORDER**

Before the Court is a Motion for Reconsideration<sup>1</sup> (Record Document 20) filed by Petitioner Harold Joe Black ("Black"). Black moves the Court to reconsider the denial of his Motion to Amend/Correct (Record Document 13). More specifically, Black seeks to amend his petition to include recently exhausted claims in the above matter.

As articulated in the Report and Recommendation filed by Magistrate Judge Hornsby, Black is not in custody under the sentence he seeks to attack. Thus, Black failed to state a cause of action under 28 U.S.C. § 2254, and this Court does not have subject-matter jurisdiction over the matter. Accordingly, any recently exhausted claims pertaining to other unrelated state action is more appropriately handled in a subsequent writ.<sup>2</sup>

Accordingly,

---

<sup>1</sup>"While the Federal Rules of Civil Procedure do not provide for a motion for reconsideration, such a motion may be considered either a Rule 59(e) motion to alter or amend judgment or a Rule 60(b) motion for relief from judgment or order. If the motion is filed within [28] days of the judgment or order of which the party complains, it is considered a Rule 59(e) motion; otherwise, it is treated as a Rule 60(b) motion." Shepherd v. Int'l Paper Co., 372 F.3d 326, 328 (5th Cir. 2004).

<sup>2</sup>Black's citation to the unreported Ninth Circuit Court of Appeals decision Rust v. Hall, 346 F. App'x 163 (9th Cir. 2009), involves differing facts and is not controlling over this matter. Unlike in Hall, this Court did not deny Black's newly exhausted claims as second and successive. Further, the district court in Hall did, in fact, exercise subject matter jurisdiction over petitioner's first claim at the time it denied the second *habeas corpus* petition.

**IT IS ORDERED** that the Motion for Reconsideration (Record Document 20) filed by Petitioner Harold Joe Black is **DENIED**.

**THUS DONE AND SIGNED**, in Shreveport, Louisiana, this 31st day of May, 2013.

  
\_\_\_\_\_  
S. MAURICE HICKS, JR.  
UNITED STATES DISTRICT JUDGE